

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

9 VAC 5 CHAPTER 150.
REGULATION FOR TRANSPORTATION CONFORMITY.

PART I.
GENERAL DEFINITIONS.

9 VAC 5-150-10 General.
9 VAC 5-150-20 Terms defined.

9 VAC 5-150-10 General.

A. For the purpose of this regulation and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in 9 VAC 5-150-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in this chapter, terms used shall have the meanings given them by the federal Clean Air Act, Titles 23 and 49 of the United States Code, other U.S. Environmental Protection Agency regulations, other USDOT regulations, 9 VAC 5-170-20 (definitions, Regulation for General Administration), or commonly ascribed to them by recognized authorities, in that order of priority.

9 VAC 5-150-20 Terms defined.

"Administrator" means the administrator of the Environmental Protection Agency (EPA) or an authorized representative.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Applicable implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Board" means the State Air Pollution Control Board or its designated representative.

"Cause or contribute to a new violation" means, with respect to a project,:

1. To cause or contribute to a new violation of a standard in the area

substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

2. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in the area.

"Control strategy implementation plan revision" means the applicable state implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy federal Clean Air Act requirements for demonstrations of reasonable further progress and attainment (§§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b) for nitrogen dioxide of the federal Clean Air Act).

"Control strategy period" means, with respect to particulate matter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), or any combination of the preceding, ozone precursors (volatile organic compounds and oxides of nitrogen), that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, ozone, or any combination of the preceding as appropriate. This period ends when a State submits and EPA approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area.

"Criteria pollutant" means any pollutant for which a national ambient air quality standard is established in 40 CFR Part 50.

"DEQ" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"DEQ Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

"Design scope" means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety, or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"EPA" means the U.S. Environmental Protection Agency.

"Facility" means something that is built, installed, or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC 7401 et seq.

"FHWA" means the Federal Highway Administration of U.S. Department of Transportation (USDOT).

"FHWA/FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

"FTA" means the Federal Transit Administration of USDOT.

"Forecast period" means, with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR Part 450.

"Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Horizon year" means a year for which the transportation plan describes the envisioned transportation system according to 9 VAC 5-150-140.

"Hot-spot analysis" means an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be

estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

"Incomplete data area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified, in 40 CFR Part 81, as an incomplete data area.

"Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist, or both, during the future period in question, if the project were not implemented.

"ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240).

"LPO" or "Lead Planning Organization" means the organization certified by the state as being responsible for the preparation of control strategy implementation plan revisions for nonattainment areas under § 174 of the federal Clean Air Act. The organization includes elected officials of local governments in the affected nonattainment area, and representatives of DEQ, VDOT, the MPO(s) for the affected area, and other agencies and organizations that have responsibilities for developing, submitting or implementing any of the plan revisions. It is the forum for cooperative air quality planning decision-making.

"Maintenance area" means any geographic region of the United States previously designated nonattainment under § 107 of the federal Clean Air Act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.

"Maintenance period" means, with respect to a pollutant or pollutant precursor, that period of time beginning when the state submits and the U.S. Environmental Protection Agency approves a request under § 107(d) of the federal Clean Air Act for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

"Maintenance plan" means a revision to the applicable implementation plan, meeting the requirements of § 175A of the federal Clean Air Act.

"MPO" or "Metropolitan Planning Organization" means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 USC 134 and 49 USC 1607. It is the forum for cooperative transportation decision-making.

"Milestone" means as defined in §§ 182(g) and 189(c)(1) of the federal Clean Air Act. A milestone consists of an emissions level and the date on which it is required to be achieved.

"Motor vehicle emissions budget" means that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or a designee, subject to a public hearing, and submitted to the U.S. Environmental Protection Agency, but not yet approved by the U.S. Environmental Protection Agency) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for nitrogen oxides for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this nitrogen oxides budget will be achieved with measures in the implementation plan (as an implementation plan must do for volatile organic compound milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a nitrogen oxides budget if nitrogen oxide reduction are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

"National ambient air quality standards (NAAQS)" means those standards established pursuant to § 109 of the federal Clean Air Act.

"NEPA" means the National Environmental Policy Act of 1969 as amended (42 USC 4321 et seq.)

"NEPA process completion" means, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

"Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the federal Clean Air Act for any pollutant for which a national ambient air quality standard exists.

"Not classified area" means any carbon monoxide nonattainment area which the U.S. Environmental Protection Agency has not classified as either moderate or serious.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls, or supervises a source or facility.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Phase II of the interim period" means, with respect to a pollutant or pollutant precursor, that period of time after December 27, 1993, lasting until the earlier of the following:

1. Submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or a designee and have been subject to a public hearing, or

2. The date that the federal Clean Air Act requires relevant control strategy implementation plans to be submitted to the U.S. Environmental Protection Agency, provided the U.S. Environmental Protection Agency has notified the state, MPO, and USDOT of the state's failure to submit any such plans. The precise end of Phase II of the interim period is defined in 9 VAC 5-150-360.

"PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"Project" means a highway project or a transit project.

"Protective finding" means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by § 110(a)(2)(A) of the federal Clean Air Act.

"Recipient of funds designated under Title 23 USC or the Federal Transit Act" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 USC or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

"Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

"Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or,

where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under § 182(h) of the federal Clean Air Act as a rural transport area.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Standard" means a national ambient air quality standard.

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Submarginal area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified as submarginal in 40 CFR Part 81.

"Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

"Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

"Transitional area" means any ozone nonattainment area which the U.S. Environmental Protection Agency has classified as transitional in 40 CFR Part 81.

"Transitional period" means, with respect to a pollutant or pollutant precursor, that

period of time which begins after submission to the U.S. Environmental Protection Agency of the relevant control strategy implementation plan revision which has been endorsed by the Governor or a designee and has been subject to a public hearing. The transitional period lasts until the U.S. Environmental Protection Agency takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in 9 VAC 5-150-360.

"Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable state implementation plan that is either one of the types listed in § 108 of the federal Clean Air Act, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not transportation control measures.

"Transportation improvement program (TIP)" means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR Part 450.

"Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR Part 450.

"Transportation project" means a highway project or a transit project.

"USDOT" means the U.S. Department of Transportation.

"VDOT" means the Virginia Department of Transportation.

"VDRPT" means the Virginia Department of Rail and Public Transportation.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well being.

PART II.
GENERAL PROVISIONS.

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| 9 VAC 5-150-30 | Applicability. |
| 9 VAC 5-150-40 | Authority of board and DEQ. |
| 9 VAC 5-150-50 | Repealed. |
| 9 VAC 5-150-60 | Repealed. |
| 9 VAC 5-150-70 | Repealed. |
| 9 VAC 5-150-80 | Relationship of state regulations to federal regulations. |
| 9 VAC 5-150-90 | Repealed. |
| 9 VAC 5-150-100 | Repealed. |

9 VAC 5-150-30 Applicability.

A. The provisions of this regulation, unless specified otherwise, shall apply to the following actions:

1. Except as provided for in subsection C of this section or 9 VAC 5-150-420, conformity determinations are required for:

a. The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT;

b. The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a MPO or USDOT; and

c. The approval, funding, or implementation of FHWA/FTA projects.

2. Conformity determinations are not required under this regulation for individual projects which are not FHWA/FTA projects. However, 9 VAC 5-150-370 applies to the projects if they are regionally significant.

3. This regulation shall be effective on and apply to conformity determinations for which the final decision is made on or after the effective date of the approval of this regulation by EPA.

B. The provisions of this regulation, unless specified otherwise, shall apply to the following geographic areas:

1. The provisions of this regulation shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

2. The provisions of this regulation apply with respect to emissions of

the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particulate matter (PM₁₀).

3. The provisions of this regulation apply with respect to emissions of the following precursor pollutants:

- a. Volatile organic compounds and nitrogen oxides in ozone areas;
- b. Nitrogen oxides in nitrogen dioxide areas; and
- c. Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ areas if:

(1) During the interim period, the EPA Regional Administrator or the DEQ Director has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT; or

(2) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for the emissions as part of the reasonable further progress, attainment or maintenance strategy.

C. The applicability of this regulation, unless specified otherwise, shall be subject to the following limitations:

1. Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project shall be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

D. A grace period for new nonattainment areas is allowed for areas or portions of areas which have been in attainment for either ozone, CO, PM-10, or NO_x since 1990 and are subsequently redesignated to nonattainment for any of these pollutants, the provisions of this chapter shall not apply for such pollutant for 12 months following the

date of final designation to nonattainment.

9 VAC 5-150-40 Authority of board and DEQ.

A. No provision of this regulation shall limit the power of the board to take such appropriate action as necessary to control and abate air pollution in emergency situations.

B. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act and by the adoption of this regulation, the board confers upon the DEQ the administrative, enforcement and decision making authority enumerated in this regulation.

C. The board reserves the right to exercise its authority in any of the powers delegated in this regulation should it choose to do so.

D. The DEQ Director has final authority to adjudicate contested decisions of subordinates delegated powers by him prior to appeal of the decisions to the circuit court or consideration by the board.

9 VAC 5-150-50 Repealed.

9 VAC 5-150-60 Repealed.

9 VAC 5-150-70 Repealed.

9 VAC 5-150-80 Relationship of state regulations to federal regulations.

A. In order for the Commonwealth to fulfill its obligations under the federal Clean Air Act, some provisions of this regulation are required to be approved by the U.S. Environmental Protection Agency and when approved those provisions become federally enforceable.

B. In cases where this regulation specifies that procedures or methods shall be approved by, acceptable to, or determined by the board or DEQ or other similar phrasing or specifically provide for decisions to be made by the board or DEQ, it may be necessary to have the actions (approvals determinations, exemptions, exclusions, or decisions) reviewed and confirmed as acceptable or approved by the U.S. Environmental Protection Agency in order to make them federally enforceable. Determination of which state actions require federal confirmation or approval and the administrative mechanism for making associated confirmation or approval decisions shall be made on a case-by-case basis in accordance with U.S. Environmental Protection Agency regulations and policy.

9 VAC 5-150-90 Repealed.

PART III.
CRITERIA AND PROCEDURES FOR
MAKING CONFORMITY DETERMINATIONS.

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| 9 VAC 5-150-110 | Priority. |
| 9 VAC 5-150-120 | Frequency of conformity determinations. |
| 9 VAC 5-150-130 | Consultation. |
| 9 VAC 5-150-140 | Content of transportation plans. |
| 9 VAC 5-150-150 | Relationship of transportation plan and TIP conformity with the NEPA process. |
| 9 VAC 5-150-160 | Fiscal constraints for transportation plans and TIPs. |
| 9 VAC 5-150-170 | Criteria and procedures for determining conformity of transportation plans, programs, and projects: General. |
| 9 VAC 5-150-180 | Criteria and procedures: Latest planning assumptions. |
| 9 VAC 5-150-190 | Criteria and procedures: Latest emissions model. |
| 9 VAC 5-150-200 | Criteria and procedures: Consultation. |
| 9 VAC 5-150-210 | Criteria and procedures: Timely implementation of TCMs. |
| 9 VAC 5-150-220 | Criteria and procedures: Currently conforming transportation plan and TIP. |
| 9 VAC 5-150-230 | Criteria and procedures: Projects from a plan and TIP. |
| 9 VAC 5-150-240 | Criteria and procedures: Localized CO and PM ₁₀ violations (hot spots). |
| 9 VAC 5-150-250 | Criteria and procedures: Compliance with PM ₁₀ control measures. |
| 9 VAC 5-150-260 | Criteria and procedures: Motor vehicle emissions budget (transportation plan). |
| 9 VAC 5-150-270 | Criteria and procedures: Motor vehicle emissions budget (TIP). |
| 9 VAC 5-150-280 | Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP). |
| 9 VAC 5-150-290 | Criteria and procedures: Localized CO violations (hot spots) in the interim period. |
| 9 VAC 5-150-300 | Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan). |
| 9 VAC 5-150-310 | Criteria and procedures: Interim period reductions in ozone and CO areas (TIP). |
| 9 VAC 5-150-320 | Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP). |
| 9 VAC 5-150-330 | Criteria and procedures: Interim period reductions for PM ₁₀ and NO ₂ areas (transportation plan). |
| 9 VAC 5-150-340 | Criteria and procedures: Interim period reductions for PM ₁₀ and NO ₂ areas (TIP). |
| 9 VAC 5-150-350 | Criteria and procedures: Interim period reductions for PM ₁₀ and NO ₂ areas (project not from a plan and TIP). |
| 9 VAC 5-150-360 | Transition from the interim period to the control strategy period. |

- 9 VAC 5-150-370 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.
- 9 VAC 5-150-380 Procedures for determining regional transportation-related emissions.
- 9 VAC 5-150-390 Procedures for determining localized CO and PM₁₀ concentrations (hot-spot analysis).
- 9 VAC 5-150-400 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
- 9 VAC 5-150-410 Enforceability of design concept and scope and project-level mitigation and control measures.
- 9 VAC 5-150-420 Exempt projects.
- 9 VAC 5-150-430 Projects exempt from regional emissions analyses.
- 9 VAC 5-150-440 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.
- 9 VAC 5-150-450 Review and confirmation of this chapter by board.

9 VAC 5-150-110 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

9 VAC 5-150-120 Frequency of conformity determinations.

A. Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects shall be made according to the requirements of this section and the applicable implementation plan.

B. In addition to the requirements of subsection A of this section, conformity determinations and conformity redeterminations for transportation plans shall be made according to the following requirements:

1. Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by USDOT.

2. All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in 9 VAC 5-150-420. The conformity determination shall be based on the transportation plan and the revision taken as a whole.

3. Conformity of existing transportation plans shall be redetermined

within 18 months of the following, or the existing conformity determination shall lapse:

- a. November 24, 1993;
- b. EPA approval of an implementation plan revision which:
 - (1) Establishes or revises a transportation-related emissions budget (as required by §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide of the federal Clean Air Act); or
 - (2) Adds, deletes, or changes TCMs; and
- c. EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

4. In any case, conformity determinations shall be made no less frequently than every three years, or the existing conformity determination will lapse.

C. In addition to the requirements of subsection A of this section, conformity determinations and conformity redeterminations for transportation improvement programs shall be made according to the following requirements:

1. A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by USDOT.

2. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in 9 VAC 5-150-420.

3. After an MPO adopts a new or revised transportation plan, conformity shall be redetermined by the MPO and USDOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in 9 VAC 5-150-420. Otherwise, the existing conformity determination for the TIP shall lapse.

4. In any case, conformity determinations shall be made no less frequently than every three years or the existing conformity determination shall lapse.

D. In addition to the requirements of subsection A of this section, conformity determinations and conformity redeterminations for FHWA/FTA projects shall be made according to the following requirements:

FHWA/FTA projects shall be found to conform before they are adopted,

accepted, approved, or funded. Conformity shall be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

9 VAC 5-150-130 Consultation.

A. The MPOs, LPOs, DEQ, VDOT and VDRPT shall undertake the procedures prescribed in this section for interagency consultation, conflict resolution and public consultation with each other and with local or regional offices of EPA, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, the unified planning work program under 23 CFR § 450.314, transportation plans, TIPs, and associated conformity determinations required by this regulation.

B. Until EPA grants approval of this regulation, the MPOs, and VDOT and VDRPT, prior to making conformity determinations, shall provide reasonable opportunity for consultation with LPOs, DEQ and EPA on the issues in subsection D 1 of this section.

C. The provisions of this subsection shall be followed with regard to general factors associated with interagency consultation.

1. Representatives of the MPOs, VDOT, VDRPT, FHWA, and FTA shall undertake an interagency consultation process, in accordance with subsections C 1 and 3 and D of this section, with the LPOs, DEQ and EPA on the development of the unified planning work program under 23 CFR § 450.314, transportation plans, TIPs, any revisions to the preceding documents, and associated conformity determinations.

a. MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the unified planning work program under 23 CFR § 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. In the case of non-metropolitan areas, VDOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the statewide transportation plan, the statewide TIP, and any amendments or revisions thereto. The MPOs shall be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to any determinations of conformity under this regulation for which the MPO is responsible.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare summaries of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting

information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on major activities (such as the development of a transportation plan, the development of a TIP, or any determination of conformity on transportation plans or TIPs) shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subsection C 1 of this section with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subsection C 1 of this section, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

2. Representatives of the LPOs, DEQ, and EPA shall undertake an interagency consultation process, in accordance with subsections C 2 and 3 of this section, with MPOs, VDOT, VDRPT, FHWA, and FTA on the development of control strategy implementation plan revisions, the list of TCMs in the applicable implementation plan, and any revisions to the proceeding documents.

a. The DEQ, in conjunction with the LPOs, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of control strategy implementation plan revisions, the credits associated with the list of TCMs in the applicable implementation plan, and any amendments or revisions thereto.

b. It shall be the affirmative responsibility of the lead agency to initiate the process by notifying other participants, convene meetings, assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner, prepare minutes of consultation meetings, maintain a written record of the consultation process, provide final documents and supporting information to each agency after approval or adoption, and to assure the adequacy of the interagency consultation process with respect to the subject document or decision.

c. Regular consultation on the development of any control strategy implementation plan revision shall include meetings beginning on a date determined by the lead agency to be adequate to meet the date a final document is required and continuing at frequency mutually determined by the affected agencies. In addition, technical meetings shall be convened as necessary.

d. Each lead agency in the consultation process shall confer with all other agencies identified under subsection C 1 of this section with an interest in the document to be developed, provide all information to those agencies needed for meaningful input, solicit early and continuing input from those agencies, and prior to taking any action, consider the views of each agency and respond to those views in a timely, substantive written manner prior to any final decision on the documents. The views and written responses shall be made part of the record of any decision or action.

e. It shall be the responsibility of each agency specified in subsection C 1 of this section, when not fulfilling the responsibilities of lead agency, to confer with the lead agency and other participants in the consultation process, review and comment as appropriate (including comments in writing) on all proposed and final documents and decisions in a timely manner, attend consultation and decision meetings, provide input on any area of substantive expertise or responsibility, and provide technical assistance to the lead agency or to the consultation process when requested.

3. The specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

a. The MPOs shall be responsible for the following:

(1) Developing metropolitan transportation plans and TIPs in accordance with 23 CFR Part 450 and 49 CFR Part 613 and Intermodal Surface Transportation and Efficiency Act.

(2) Adopting conformity determinations in conjunction with the adoption of transportation plans and TIPs and any revisions to the documents.

(3) In cooperation with VDOT, with assistance from VDRPT:

(a) Developing conformity assessments and associated documentation.

(b) Evaluating potential TCM projects and impacts.

(c) (i) Developing or approving transportation and related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for SIP tracking and conformity of transportation plans, TIPs and projects.

- (d) Monitoring regionally significant projects.
- (e) Providing technical and policy input into the development of emissions budgets.
- (f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.
- (g) Involving the DEQ and LPOs continuously in the process.
- (h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.
- (i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

b. The VDOT, with assistance from the VDRPT, shall be responsible for the following:

- (1) Developing statewide transportation plans and statewide TIPs.
- (2) Providing demand forecasting and on-road mobile source emission inventories.
- (3) Circulating draft and final project environmental documents to other agencies.
- (4) Convening air quality technical review meetings on specific projects as needed or when requested by other agencies.
- (5) In cooperation with the MPOs:
 - (a) Developing conformity assessments and associated documentation.
 - (b) Evaluating potential TCM projects and impacts.
 - (c) (i) Developing or approving transportation and

related socio-economic data and planning assumptions, or both, and (ii) providing the data and assumptions for use in air quality analysis for SIP tracking and conformity of transportation plans, TIPs and projects.

(d) Monitoring regionally significant projects.

(e) Providing technical and policy input into the development of emissions budgets.

(f) Assuring the proper completion of transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs need for conformity assessments.

(g) Involving the DEQ and LPOs continuously in the process.

(h) Consulting with FHWA and FTA on (i) timely action on final findings of conformity, after consultation with other agencies as provided in this section; and (ii) guidance on conformity and the transportation planning process to agencies in interagency consultation.

(i) Consulting with EPA on (i) review and approval of updated motor vehicle emissions factors, emission inventories and budgets; and (ii) guidance on conformity criteria and procedures to the agencies involved in the interagency consultation process.

c. The LPOs shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Developing control strategy implementation plan revisions and maintenance plans.

(3) Providing a staff liaison to the MPOs for conformity and to be responsive to MPO requests for information and technical guidance.

(4) Involving the MPOs, VDOT AND VDRPT continuously in the process.

d. The DEQ shall be responsible for the following:

(1) Developing emissions inventories and budgets.

(2) Tracking attainment of air quality standards, and emission factor model updates.

(3) Gaining final approval at state level for control strategy

implementation plan revisions and maintenance plans.

(4) Providing a staff liaison to the LPOs for conformity and to be responsive to LPO requests for information and technical guidance.

(5) Involving the LPOs continuously in the process.

e. The FHWA and FTA shall be responsible for the following:

(1) Assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section.

(2) Providing guidance on conformity and the transportation planning process to agencies in interagency consultation.

f. The EPA shall be responsible for the following:

(1) Reviewing and approving updated motor vehicle emissions factors.

(2) Providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(3) Assuring timely action on conformity analysis and findings and SIP revisions.

D. The provisions of this subsection shall be followed with regard to specific processes associated with interagency consultation.

1. An interagency consultation process involving the MPOs, LPOs, DEQ, VDOT, VDRPT, EPA, FHWA, and FTA shall be undertaken for the following:

a. Evaluating and choosing each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emission analyses, including vehicle miles traveled (VMT) forecasting, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subsections C 1 and 3 of this section.

b. Determining which transportation projects should be considered "regionally significant" for the purpose of regional emission analysis (in addition to those functionally classified as principal arterial or higher; or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subsections C 1 and 3 of this section.

c. Evaluating whether projects otherwise exempted from meeting the requirements of 9 VAC 5-150-420 and 9 VAC 5-150-430, should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason, to be initiated by VDOT, in consultation with the MPOs, and conducted in accordance with subsections C 1 and 3 of this section.

d. Making a determination, as required by 9 VAC 5-150-210 C 1, whether past obstacles to implementation of TCMs that are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs, to be initiated by VDOT as lead agency, in consultation with the MPOs and VDRPT, and conducted in accordance with subsections C 1 and 3 of this section. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

e. Notifying all parties to the consultation process of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 9 VAC 5-150-420, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subsections C 1 and 3 of this section.

f. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or control strategy implementation plan revisions, or making conformity determinations, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subsections C 1 and 3 of this section.

g. In cases where there are PM₁₀ nonattainment areas, VDOT, in consultation with the MPOs, shall initiate a process conducted in accordance with subsections C 1 and 3 of this section to identify, as required by 9 VAC 5-150-390 D, projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis.

2. An interagency consultation process in accordance with subsection C of this section involving the MPOs, LPOs, DEQ, VDOT, and VDRPT shall be undertaken for the following:

a. Evaluating events which may trigger new conformity determinations in addition to those triggering events established by 9 VAC 5-150-340, to be initiated by VDOT, in consultation with the MPOs and DEQ, and conducted in accordance with subsections C 1 and 3 of this section.

b. Consulting on emissions analysis for transportation activities

which cross the borders of MPOs or nonattainment areas, to be initiated by VDOT in consultation with the MPOs, and conducted in accordance with subsections C 1 and 3 of this section.

3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, an interagency consultation process in accordance with subsections C 1 and 3 of this section involving the MPOs and VDOT shall be undertaken for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area, to be initiated by VDOT, in consultation with the MPOs, and in accordance with subsections C 1 and 3 of this section.

4. To assure that plans for construction of regionally significant projects which are not FHWA or FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 USC or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed, an interagency consultation process shall be undertaken, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subsections C 1 and 3 of this section involving the MPO, VDOT, VDRPT, and recipients of funds designated under Title 23 USC or the Federal Transit Act.

5. An interagency consultation process in accordance with subsections C 1 and 3 of this section involving the MPOs and other recipients of funds designated under Title 23 USC or the Federal Transit Act shall be undertaken for developing assumptions regarding the location and design concept and scope of projects which are disclosed to the MPO as required by subsection D 4 of this section but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 9 VAC 5-150-380, to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subsections C 1 and 3 of this section.

6. An interagency consultation process in accordance with subsections C 1 and 3 of this section shall be undertaken for the design, schedule, and funding of research and data collection efforts and model developments in regional transportation (such as household or travel transportation surveys) to be initiated by the MPO, in consultation with VDOT, and conducted in accordance with subsections C 1 and 3 of this section.

E. The provisions of this subsection shall be followed with regard to conflict resolution associated with interagency consultation.

1. Unresolved conflicts among state agencies, or between state agencies and the MPO(s), or among MPO member jurisdictions, shall be identified by an MPO or agency in writing to the other MPO, DEQ, VDOT, or VDRPT, with copies to FHWA, FTA and EPA. The MPO's or agency's written notice shall:

a. Explain the nature of the conflict;

b. Review options for resolving the conflict;

c. Describe the MPO's or agency's proposal to resolve the conflict;

d. Explain the consequences of not reaching a resolution; and

e. Request that comments on the matter be received within two weeks.

2. If the above action does not result in a resolution to the conflict, either of the following shall apply:

a. If the conflict is between the MPOs or between the MPO(s) and VDOT or VDRPT or both, then the parties shall follow the coordination procedures of 23 CFR § 450.210.

b. If the conflict is between the MPO(s) or VDOT or VDRPT and the DEQ and the conflict can not be resolved by the affected agency heads, then the DEQ Director may elevate the conflict to the Governor in accordance with the procedures of subsection E 3 of this section. If the DEQ Director does not appeal to the Governor within 14 days as provided in subsection E 3 a of this section, the MPO or VDOT or VDRPT may proceed with its final conformity determination.

3. Appeals to the Governor by the DEQ Director under the provisions of subsection E 2 b of this section shall be in accordance with the following procedures:

a. The DEQ Director has 14 calendar days to appeal to the Governor after the MPO(s) or VDOT or VDRPT has notified the DEQ Director of the agency's or MPO's resolution of DEQ's comments. The notification to the DEQ Director shall be in writing and shall be hand-delivered. The 14 day clock shall commence when VDOT or VDRPT or the MPO has confirmed receipt by the DEQ Director of the agency's or MPO's resolution of the DEQ's comments.

b. The appeal to the Governor shall consist of the following: the conformity determination and any supporting documentation; DEQ's comments on the determination; the MPO(s) or VDOT or VDRPT resolution of DEQ's comments; and DEQ's appeal document.

c. The DEQ shall provide a complete appeal package to the MPO, VDOT and VDRPT within 24 hours of the time the appeal is filed with the Governor's Office.

d. If the Governor does not concur with the conformity determination, he may direct revision of the applicable implementation plan, revision of the planned program of projects, revision of the conformity analysis or any combination of the preceding.

e. If the Governor concurs with the conformity determination made by the MPO and VDOT, the MPO and VDOT may proceed with the final conformity determination.

f. The Governor may delegate his role in this process, but not to the agency head or staff of DEQ, VDOT or VDRPT or the Commonwealth Board of Transportation.

4. Nothing in this section shall prevent the state agencies and MPOs from making efforts upon their own initiative to obtain mutual conflict resolution through conference or other appropriate means.

F. The provisions of this subsection shall be followed with regard to public consultation.

1. The MPOs shall establish a proactive involvement process which provides reasonable opportunity for review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR Part 450.

2. The MPOs shall address in writing public comments regarding plans for a regionally significant project, not receiving FHWA or FTA funding or approval, and how the project is properly reflected in the emission analysis supporting a proposed conformity finding for a transportation plan or TIP.

3. The MPOs shall also provide an opportunity for public involvement in conformity determinations for projects where otherwise required by law.

9 VAC 5-150-140 Content of transportation plans.

A. Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

1. The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

a. Horizon years may be no more than 10 years apart.

b. The first horizon year may be no more than 10 years from the

base year used to validate the transportation demand planning model.

c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.

d. The last horizon year shall be the last year of the transportation plan's forecast period.

2. For these horizon years:

a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and 9 VAC 5-150-130;

b. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

B. Ozone or CO nonattainment areas which are reclassified from moderate to serious shall meet the requirements of subsection A of this section within two years from the date of reclassification.

C. Transportation plans for other areas shall meet the requirements of subsection A of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of 9 VAC 5-150-170 through 9 VAC 5-150-350.

D. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

9 VAC 5-150-150 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in 9 VAC 5-150-170 through 9 VAC 5-150-350 for projects not from a TIP before NEPA process completion.

9 VAC 5-150-160 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs shall be fiscally constrained consistent with 23 CFR Part 450 in order to be found in conformity.

9 VAC 5-150-170 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

A. In order to be found to conform, each transportation plan, program, and FHWA/FTA project shall satisfy the applicable criteria and procedures in 9 VAC 5-150-180 through 9 VAC 5-150-350 as listed in Table 1 in subsection B of this section, and shall comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

B. The following table indicates the criteria and procedures in 9 VAC 5-150-180 through 9 VAC 5-150-350 which apply for each action in each time period.

Table 1.
Conformity Criteria.

ALL PERIODS

| Action | Criteria |
|--|---|
| Transportation Plan | 9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-210 B |
| TIP | 9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-210 C |
| Project (From a conforming plan and TIP) | 9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-220, 9 VAC 5-150-230, 9 VAC 5-150-240, 9 VAC 5-150-250 |
| Project (Not from a conforming plan and TIP) | 9 VAC 5-150-180, 9 VAC 5-150-190, 9 VAC 5-150-200, 9 VAC 5-150-210 D, 9 VAC 5-150-220, 9 VAC 5-150-240, 9 VAC 5-150-250 |

PHASE II OF THE INTERIM PERIOD

| Action | Criteria |
|--|---|
| Transportation Plan | 9 VAC 5-150-300, 9 VAC 5-150-330 |
| TIP | 9 VAC 5-150-310, 9 VAC 5-150-340 |
| Project (From a conforming plan and TIP) | 9 VAC 5-150-290 |
| Project (Not from a conforming plan and TIP) | 9 VAC 5-150-290, 9 VAC 5-150-320, 9 VAC 5-150-350 |

TRANSITIONAL PERIOD

| Action | Criteria |
|--|--|
| Transportation Plan | 9 VAC 5-150-260, 9 VAC 5-150-300, 9 VAC 5-150-330 |
| TIP | 9 VAC 5-150-270, 9 VAC 5-150-310, 9 VAC 5-150-340 |
| Project (From a conforming plan and TIP) | 9 VAC 5-150-290 |
| Project (Not from a conforming plan and TIP) | 9 VAC 5-150-280, 9 VAC 5-150-290, 9 VAC 5-150-320, 9 VAC 5-150-350 |

CONTROL STRATEGY AND MAINTENANCE PERIODS

| Action | Criteria |
|--|------------------------|
| Transportation Plan | 9 VAC 5-150-260 |
| TIP | 9 VAC 5-150-270 |
| Project (From a conforming plan and TIP) | No additional criteria |
| Project (Not from a conforming plan and TIP) | 9 VAC 5-150-280 |

- 9 VAC 5-150-180 The conformity determination shall be based on the latest planning assumptions.
- 9 VAC 5-150-190 The conformity determination shall be based on the latest emission estimation model available.
- 9 VAC 5-150-200 The MPO shall make the conformity determination according to the consultation procedures of this regulation.
- 9 VAC 5-150-210 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan.
- 9 VAC 5-150-220 There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- 9 VAC 5-150-230 The project shall come from a conforming transportation plan and program.
- 9 VAC 5-150-240 The FHWA/FTA project shall not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.
- 9 VAC 5-150-250 The FHWA/FTA project shall comply with PM₁₀ control measures in the applicable implementation plan.
- 9 VAC 5-150-260 The transportation plan shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- 9 VAC 5-150-270 The TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- 9 VAC 5-150-280 The project which is not from a conforming transportation plan and conforming TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- 9 VAC 5-150-290 The FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- 9 VAC 5-150-300 The transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas.
- 9 VAC 5-150-310 The TIP shall contribute to emissions reductions in ozone and CO nonattainment areas.
- 9 VAC 5-150-320 The project which is not from a conforming transportation plan and TIP shall contribute to emissions reductions in ozone and CO nonattainment areas.

9 VAC 5-150-330 The transportation plan shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas.

9 VAC 5-150-340 The TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas.

9 VAC 5-150-350 The project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas.

9 VAC 5-150-180 Criteria and procedures: Latest planning assumptions.

A. The conformity determination, with respect to all other applicable criteria in 9 VAC 5-150-190 through 9 VAC 5-150-350, shall be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination shall satisfy the requirements of subsections B through F of this section.

B. Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make the estimates and approved by the MPO. The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by 9 VAC 5-150-130.

9 VAC 5-150-190 Criteria and procedures: Latest emissions model.

A. The conformity determination shall be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by EPA before they are used in the conformity analysis.

B. EPA shall consult with USDOT to establish a grace period following the specification of any new model.

1. The grace period shall be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

2. The length of the grace period shall depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA shall announce the appropriate grace period in the Federal Register.

C. Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

9 VAC 5-150-200 Criteria and procedures: Consultation.

The MPO shall make the conformity determination according to the consultation procedures in this regulation and according to the public participation involvement procedures established by the MPO in compliance with 23 CFR Part 450. This criterion applies during all periods. Until this regulation is approved by EPA, the conformity determination shall be made according to the procedures in 9 VAC 5-150-130 A 2 and 9 VAC 5-150-130 E. Once this regulation has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

9 VAC 5-150-210 Criteria and procedures: Timely implementation of TCMs.

A. The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

B. For transportation plans, this criterion is satisfied if the following two conditions are met:

1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

C. For TIPs, this criterion is satisfied if the following conditions are met:

1. An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if the TCMs are behind the schedule established in the applicable implementation plan, the MPO and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

2. If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

D. For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

9 VAC 5-150-220 Criteria and procedures: Currently conforming transportation plan and TIP.

There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and USDOT according to the procedures of this chapter.

A. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by USDOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of 9 VAC 5-150-120.

B. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of this chapter are satisfied.

9 VAC 5-150-230 Criteria and procedures: Projects from a plan and TIP.

A. The project shall come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project shall satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection B of this section and from a conforming program if it meets the requirements of subsection C of this section. Special provisions for TCMs in an applicable implementation plan are provided in subsection D of this section.

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

1. For projects which are required to be identified in the transportation plan in order to satisfy 9 VAC 5-150-140, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and shall not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if the following conditions are met:

1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement the measures shall be obtained from the project sponsor, operator, or both as required by 9 VAC 5-150-410 A in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

D. This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

9 VAC 5-150-240 Criteria and procedures: Localized CO and PM₁₀ violations (hot spots).

A. The FHWA/FTA project shall not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations shall be created and the severity or number of existing violations shall not be increased as a result of the project.

B. The demonstration shall be performed according to the requirements of 9 VAC 5-150-130 C 1 a and 9 VAC 5-150-390.

C. For projects which are not of the type identified by 9 VAC 5-150-390 A or 9 VAC 5-150-390 D, this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations shall be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration shall be performed according to the requirements of 9 VAC 5-150-390 B.

9 VAC 5-150-250 Criteria and procedures: Compliance with PM₁₀ control measures.

The FHWA/FTA project shall comply with PM₁₀ control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM₁₀ emissions from the construction activities, normal use, operation associated with the project, or any combination of the preceding) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

9 VAC 5-150-260 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

A. The transportation plan shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 9 VAC 5-150-440. This criterion may be satisfied if the requirements in subsections B and C of this section are met:

B. A regional emissions analysis shall be performed as follows:

1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

- a. VOC as an ozone precursor;
- b. NO_x as an ozone precursor;

c. CO;

d. PM₁₀ (and its precursors VOC, NO_x or both if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM₁₀ nonattainment problem or establishes a budget for the emissions); or

e. NO_x (in NO₂ nonattainment or maintenance areas);

2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

3. The emissions analysis methodology shall meet the requirements of 9 VAC 5-150-380;

4. For areas with a transportation plan that meets the content requirements of 9 VAC 5-150-140 A, the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

5. For areas with a transportation plan that does not meet the content requirements of 9 VAC 5-150-140 A, the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis shall also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

C. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in subsection B 1 of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

3. For nonattainment areas, emissions in each analysis or horizon year

after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

9 VAC 5-150-270 Criteria and procedures: Motor vehicle emissions budget (TIP).

A. The TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 9 VAC 5-150-440. This criterion may be satisfied if the requirements in subsections B and C of this section are met:

B. For areas with a conforming transportation plan that fully meets the content requirements of 9 VAC 5-150-140 A, this criterion may be satisfied without additional regional analysis if:

1. Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required state/local matching funds and funds for state/local funding-only projects are consistent with the revenue sources expected over the same period; and

2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

a. The TIP contains all projects which shall be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

c. The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

3. If the requirements in subsections B 1 and B 2 of this section are not

met, then:

- a. The TIP may be modified to meet those requirements; or
- b. The transportation plan shall be revised so that the requirements in subsections B 1 and 2 of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subsections B 1 and 2 of this section.

C. For areas with a transportation plan that does not meet the content requirements of 9 VAC 5-150-140 A, a regional emissions analysis shall meet all of the following requirements:

1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
2. The analysis methodology shall meet the requirements of 9 VAC 5-150-380 C; and
3. The regional analysis shall satisfy the requirements of 9 VAC 5-150-260 B 1, 9 VAC 5-150-260 B 5, and 9 VAC 5-150-260 C.

9 VAC 5-150-280 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

A. The project which is not from a conforming transportation plan and a conforming TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in 9 VAC 5-150-440. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

B. For areas with a conforming transportation plan that meets the content requirements of 9 VAC 5-150-140 A:

1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

a. Allocating funds to the project shall not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

c. The design concept and scope of the project is not significantly different from that described in the transportation plan.

2. If the requirements in subsection B 1 of this section are not met, a regional emissions analysis shall be performed as follows:

a. The analysis methodology shall meet the requirements of 9 VAC 5-150-380;

b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP; and

c. The emissions analysis shall meet the requirements of 9 VAC 5-150-260 B 1, 9 VAC 5-150-260 B 4, and 9 VAC 5-150-260 C.

C. For areas with a transportation plan that does not meet the content requirements of 9 VAC 5-150-140 A, a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

1. The analysis methodology meets the requirements of 9 VAC 5-150-380 C;

2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

3. The regional analysis satisfies the requirements of 9 VAC 5-150-260 B 1, 9 VAC 5-150-260 B 5, and 9 VAC 5-150-260 C.

9 VAC 5-150-290 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

A. Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO

nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations may be eliminated or reduced in severity and number as a result of the project.

B. The demonstration shall be performed according to the requirements of 9 VAC 5-150-130 C 1 a and 9 VAC 5-150-390.

C. For projects which are not of the type identified by 9 VAC 5-150-390 A, this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations shall be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of 9 VAC 5-150-390 B.

9 VAC 5-150-300 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

A. A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in 9 VAC 5-150-440. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections B through F of this section.

B. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

C. Define the "Baseline" scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;
2. All ongoing travel demand management or transportation system management activities; and
3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of

the previously conforming transportation plan, TIP or both; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project shall be included in the "action" scenario, as described in subsection D of this section.)

D. Define the "action" scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It shall include the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All facilities, services, and activities in the "baseline" scenario;
2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted, funded by the enforcing jurisdiction or sponsoring agency, or both since the last conformity determination on the transportation plan;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted, funded or both prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between

the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-380. Emissions in milestone years which are between the analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the "action" scenario are less than the emissions predicted from the "baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the "action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

9 VAC 5-150-310 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

A. A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in 9 VAC 5-150-440. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections B through F of this section.

B. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

C. Define the "baseline" scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All in-place regionally significant highway and transit facilities, services and activities;
2. All ongoing travel demand management or transportation system management activities; and
3. Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first

conformity determination on the TIP after November 24, 1993, a project may not be included in the "baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project shall be included in the "action" scenario, as described in subsection D of this section.)

D. Define the "action" scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It shall include the following (except that projects listed in 9 VAC 5-150-420 and 9 VAC 5-150-430 need not be explicitly considered):

1. All facilities, services, and activities in the "baseline" scenario;
2. Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted, funded or both by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted, funded or both prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions

between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-380. Emissions in milestone years which are between analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the "action" scenario are less than the emissions predicted from the "baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the "action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

9 VAC 5-150-320 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in 9 VAC 5-150-440. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of 9 VAC 5-150-300 and which includes the transportation plan and project in the "action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

9 VAC 5-150-330 Criteria and procedures: Interim period reductions for PM₁₀ and NO₂ areas (transportation plan).

A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either subsection B or C of this section are met.

B. Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area shall contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and of each transportation-related precursor of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year

shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

2. Define for each of the analysis years the "Baseline" scenario, as defined in 9 VAC 5-150-300 C, and the "Action" scenario, as defined in 9 VAC 5-150-300 D.

3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM₁₀ emissions in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and in NO_x emissions in an NO₂ nonattainment area. The analysis shall be performed for each of the analysis years according to the requirements of 9 VAC 5-150-380. The analysis shall address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

4. Demonstrate that the regional PM₁₀ emissions and PM₁₀ precursor emissions, where applicable, (for PM₁₀ nonattainment areas) and NO_x emissions (for NO₂ nonattainment areas) predicted in the "Action" scenario are less than the emissions predicted from the "Baseline" scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

C. Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area shall not be greater than baseline levels, by performing a regional emissions analysis as follows:

1. Determine the baseline regional emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) and NO_x (for NO₂ nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by this regulation defines the baseline emissions for a PM₁₀ area to be

those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

2. Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of 9 VAC 5-150-380. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

3. Demonstrate that for each analysis year the emissions estimated in subsection C 2 of this section are no greater than baseline emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) or NO_x (for NO₂ nonattainment areas) from highway and transit sources.

9 VAC 5-150-340 Criteria and procedures: Interim period reductions for PM₁₀ and NO₂ areas (TIP).

A. A TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either subsection B or C of this section are met.

B. Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area shall contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated, according to the requirements of 9 VAC 5-150-330 B 1.

2. Define for each of the analysis years the "baseline" scenario, as defined in 9 VAC 5-150-310 C, and the "action" scenario, as defined in 9 VAC 5-150-310 D.

3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "baseline" and "action" scenarios as

required by 9 VAC 5-150-330 B 3, and make the demonstration required by 9 VAC 5-150-330 B.

C. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the DEQ Director has made a finding that the precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area shall not be greater than baseline levels, by performing a regional emissions analysis as required by 9 VAC 5-150-330 C.

9 VAC 5-150-350 Criteria and procedures: Interim period reductions for PM₁₀ and NO₂ areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of 9 VAC 5-150-330 and which includes the transportation plan and project in the "action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and 9 VAC 5-150-330 B is used to demonstrate satisfaction of this criterion, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

9 VAC 5-150-360 Transition from the interim period to the control strategy period.

A. For areas that submit control strategy implementation plans the following requirements shall be met.

1. The transportation plan and TIP must be demonstrated to conform by 18 months from the date of the State's initial submission to EPA of each control strategy implementation plan establishing a motor vehicle emissions budget. If conformity is not determined by 18 months from the date of submission of such control strategy implementation plan, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made, until the transportation plan and TIP have been demonstrated to conform.

2. For areas not yet in the control strategy period for a given pollutant, conformity shall be demonstrated using the motor vehicle emissions budget(s) in a submitted control strategy implementation plan revision for that pollutant beginning 90 days after submission, unless EPA declares such budget(s) inadequate for transportation conformity purposes. The motor vehicle emissions budget(s) may be used to determine conformity during the first 90 days after its submission if EPA agrees that the budget(s)

are adequate for conformity purposes.

B. For areas that submit a plan and the plan is disapproved:

1. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and USDOT, which initiates the sanction process under § 179 or 110(m) of the federal Clean Act, the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same federal Clean Air Act requirements is submitted and conformity to this submission is determined.

2. Notwithstanding subdivision B 1 of this section, if EPA disapproves the submitted control strategy implementation plan revision but makes a protective finding, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under § 179(b)(1) of the federal Clean Air Act. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same federal Clean Air Act requirements is submitted and conformity to this submission is determined.

C. For areas where EPA notifies the State, MPO, and USDOT of the State's failure to submit or submission of an incomplete control strategy implementation plan revision, which initiates the sanction process under § 179 or 110(m) of the federal Clean Air Act, the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under § 179(b)(1) of the federal Clean Air Act, unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator.

D. When EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a State failure, the conformity lapse imposed by this section because of that State failure is removed.

E. For FHWA/FTA projects, if the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of subsections E 1 and 2 of this section shall be met.

1. Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the DEQ shall be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "action" scenario (as required by 9 VAC 5-150-300 through 9 VAC 5-150-350 compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

2. In the event of unresolved disputes on the project-level conformity determinations, the DEQ Director may escalate the issue to the Governor consistent with the procedure in 9 VAC 5-150-130 D, which applies for any DEQ comments on a conformity determination.

F. For the redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures, the requirements of subsections F 1 through 2 of this section shall be met.

1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by subsections A 1 and D of this section) does not require new emissions analysis and does not have to satisfy the requirements of 9 VAC 5-150-180 and 9 VAC 5-150-190 if:

a. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

b. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

2. A redetermination of conformity as described in subsection F 1 of this section is not considered a conformity determination for the purposes of 9 VAC 5-150-120 B 4 or 9 VAC 5-150-120 C 4 regarding the maximum intervals between conformity determinations. Conformity shall be determined according to all the applicable criteria and procedures of 9 VAC 5-150-170 within three years of the last determination which did not rely on subsection F 1 of this section.

G. For nonattainment areas which are not required to demonstrate reasonable further progress and attainment, if an area listed in 9 VAC 5-150-440 submits a control strategy implementation plan revision, the requirements of subsections A and E of this section apply. Because the areas listed in 9 VAC 5-150-440 are not required to demonstrate reasonable further progress and attainment, the provisions of subsections B and C of this section do not apply to these areas.

H. For maintenance plans, if a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by § 175A of the federal Clean Air Act is submitted to EPA, the requirements of subsection A or D of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

9 VAC 5-150-370 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal

Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of 9 VAC 5-150-220 and the requirements of one of the following subdivisions are met:

1. The project comes from a conforming plan and program consistent with the requirements of 9 VAC 5-150-230;
2. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;
3. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of 9 VAC 5-150-280;
4. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of 9 VAC 5-150-320 (in ozone and CO nonattainment areas) or 9 VAC 5-150-350 (in PM₁₀ and NO₂ nonattainment areas); or
5. During the transitional period, the project satisfies the requirements of subdivisions 3 and 4 of this section.

9 VAC 5-150-380 Procedures for determining regional transportation-related emissions.

A. With regard to conducting regional analyses for transportation-related emissions, the requirements of subsections A 1 through 6 of this section shall be met.

1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 9 VAC 5-150-130. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from the projects shall be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the

emissions analysis may include that emissions reduction credit.

3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the federal Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

4. Notwithstanding subsection A 3 of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in 9 VAC 5-150-260 through 9 VAC 5-150-280, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of 9 VAC 5-150-260 through 9 VAC 5-150-280 are satisfied.

5. A regional emissions analysis for the purpose of satisfying the requirements of 9 VAC 5-150-300 through 9 VAC 5-150-320 may account for the programs in subsection A 4 of this section, but the same assumptions about these programs shall be used for both the "baseline" and "action" scenarios.

6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to 9 VAC 5-150-130 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in the factors beyond the period considered in the applicable implementation plan.

B. For serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in subsections B 1 through 4 of this section.

1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall

be used to estimate travel within the metropolitan planning area of the nonattainment area. The model shall possess the following attributes:

a. The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

b. The network-based model(s) shall be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year;

c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used;

d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

e. Free-flow speeds on network links shall be based on empirical observations;

f. Peak and off-peak travel demand and travel times shall be provided;

g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

h. The model(s) shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

i. A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

k. Consideration of emissions increases from construction-related congestion is not specifically required.

2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration shall be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of USDOT and EPA.

3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

4. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

C. For areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995, the requirements of subsections C 1 and 2 of this section shall be met.

1. Procedures which satisfy some or all of the requirements of subsection B of this section shall be used in all areas not subject to subsection B of this section in which those procedures have been the previous practice of the MPO.

2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. The methods shall account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods shall also consider future economic activity, transit alternatives, and transportation system policies.

D. This subsection applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

1. Conformity demonstrations for projects in these areas may satisfy the requirements of 9 VAC 5-150-280, 9 VAC 5-150-320, and 9 VAC 5-150-350 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

2. The requirements of 9 VAC 5-150-280 shall be satisfied according to the procedures in 9 VAC 5-150-280 C, with references to the "transportation plan" taken to mean the statewide transportation plan.

3. The requirements of 9 VAC 5-150-320 and 9 VAC 5-150-350 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

4. The requirement of 9 VAC 5-150-370 B shall be satisfied if:

a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of 9 VAC 5-150-280, 9 VAC 5-150-320, or 9 VAC 5-150-350 (as modified by subsections D 2 and D 3 of this section), as appropriate for the time period and pollutant; and

b. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

E. For PM₁₀ from construction-related fugitive dust, the requirements of subsections E 1 and 2 of this section shall be met.

1. For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

2. In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

9 VAC 5-150-390 Procedures for determining localized CO and PM₁₀ concentrations (hot-spot analysis).

A. In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W of 40 CFR Part 51, unless, after the interagency consultation process described in 9 VAC 5-150-130 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and
5. Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

B. In cases other than those described in subsection A of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

C. CO hot-spot analyses shall include the entire project, and may be performed only after the major design features which shall significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

D. PM₁₀ hot-spot analysis shall be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in 9 VAC 5-150-130. In PM-10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this subsection for quantitative hot-spot analysis

shall not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

E. Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

F. PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor, operator or both, to the implementation of the measures, as required by 9 VAC 5-150-410 A.

G. CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

9 VAC 5-150-400 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

A. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and USDOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and USDOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

1. Emissions from all sources shall be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

2. Emissions from all sources shall result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment, or both; or

3. Emissions shall be lower than needed to provide for continued maintenance.

B. If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources shall be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the state may submit a SIP revision which assigns some or all of this safety margin to highway and

transit mobile sources for the purposes of conformity. The a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

C. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for the trades.

D. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create the subarea budgets for the purposes of conformity.

E. If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

9 VAC 5-150-410 Enforceability of design concept and scope and project-level mitigation and control measures.

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor, operator or both, written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before making conformity determinations written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by 9 VAC 5-150-260 through 9 VAC 5-150-280 and 9 VAC 5-150-300 through 9 VAC 5-150-320 or used in the project-level hot-spot analysis required by 9 VAC 5-150-240 and 9 VAC 5-150-290.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of the commitments.

C. The implementation plan revision required in this regulation shall provide that written commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project sponsors shall comply with the commitments.

D. During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of 9 VAC 5-150-

240, 9 VAC 5-150-260, and 9 VAC 5-150-270 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 9 VAC 5-150-130. The MPO and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of 9 VAC 5-150-260 and 9 VAC 5-150-270 and that the project still satisfies the requirements of 9 VAC 5-150-240, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

9 VAC 5-150-420 Exempt projects.

Notwithstanding the other requirements of this regulation, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. The projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see 9 VAC 5-150-130 C 1 c), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.

Table 2.

Exempt Projects.

SAFETY

- Railroad/highway crossing
- Hazard elimination program
- Safer non-Federal-aid system roads
- Shoulder improvements
- Increasing sight distance
- Safety improvement program
- Traffic control devices and operating assistance other than signalization projects
- Railroad/highway crossing warning devices
- Guardrails, median barriers, crash cushions
- Pavement resurfacing, rehabilitation or both
- Pavement marking demonstration
- Emergency relief (23 U.S.C. 125)
- Fencing
- Skid treatments
- Safety roadside rest areas
- Adding medians
- Truck climbing lanes outside the urbanized area
- Lighting improvements
- Widening narrow pavements or reconstructing bridges (no additional travel lanes)

Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies

Purchase of support vehicles

Rehabilitation of transit vehicles¹

Purchase of office, shop, and operating equipment for existing facilities

Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.)

Construction or renovation of power, signal, and communications systems

Construction of small passenger shelters and information kiosks

Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures)

Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way

Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet¹

Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels

Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly to construction, such as:

Planning and technical studies

Grants for training and research programs

Planning activities conducted pursuant to titles 23 and 49 U.S.C

Federal-aid systems revisions

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action

Noise attenuation

Advance land acquisitions (23 CFR 712 or 23 CFR 771)

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities)

¹ In PM₁₀ nonattainment areas, the projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes

9 VAC 5-150-430 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this regulation, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see 9 VAC 5-150-130 C 1 c), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3.

Projects Exempt From Regional Emissions Analyses.

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

9 VAC 5-150-440 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

- A. This section applies in the following areas:
1. Rural transport ozone nonattainment areas;
 2. Marginal ozone areas;
 3. Submarginal ozone areas;
 4. Transitional ozone areas;
 5. Incomplete data ozone areas;
 6. Moderate CO areas with a design value of 12.7 ppm or less; and
 7. Not classified CO areas.

B. The criteria and procedures in 9 VAC 5-150-300 through 9 VAC 5-150-320 shall remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in 9 VAC 5-150-260 through 9 VAC 5-150-280, except as otherwise provided in subsection C of this section.

C. The LPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the DEQ shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in 9 VAC 5-150-260 through 9 VAC 5-150-280 apply in lieu of the procedures in 9 VAC 5-150-300 through 9 VAC 5-150-320.

9 VAC 5-150-450 Review and confirmation of this chapter by board.

A. Prior to January 1, 2000, the department shall provide the board with an analysis to include (i) an assessment of the effectiveness of this chapter, (ii) the status of any specific federal requirements and the identification of any provisions more stringent than the federal requirements, (iii) the federal approval status of this chapter and (iv) an assessment of the need for continuation of this chapter.

B. Upon review of the department's analysis, the board shall confirm (i) the continuation of this chapter, (ii) the repeal of this chapter or (iii) the need to amend this chapter. If a decision is made in either of the latter two cases, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

HISTORICAL NOTES:

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